



SENATE BILL 343: Communications Regulatory Reform

2011-2012 General Assembly

Committee: Senate Finance
Introduced by: Sen. Brown
Analysis of: PCS to First Edition
S343-CSTD-13

Date: April 5, 2011
Prepared by: Heather Fennell
Committee Counsel

SUMMARY: *The PCS for House Bill 383 provides an alternative form of regulation for certain telecommunications providers. The PCS makes technical changes to the description of the State mechanism to support universal service.*

CURRENT LAW: S.L. 2009-238 (HB 1180) allowed incumbent telephone providers, designated in the statutes as local exchange providers (LECs), open to competition from competing local telephone providers (CLPs), and to the extent applicable CLPs, to elect to participate in an alternative form of regulation. Companies that select this new form of regulation are currently referred to as "subsection (h) companies." Under the alternative form of regulation, subsection (h) companies are no longer required to file tariffs and certain reports, including service line, access line, and service quality reports with the Utilities Commission. LECs may not elect regulation under subsection (h) unless they commit to providing stand-alone basic service to rural customers at rates comparable to rates charged to urban customers. Once an LEC elects regulation under the plan, it may not increase the rates for stand-alone basic service by more than the GDP price index unless otherwise authorized by the Utilities Commission. For those LECs and CLPs that elect regulation under the plan, the Utilities Commission retains jurisdiction over certain federal requirements of providers, telecommunications relay services, Lifeline or Link Up programs, universal service programs, carrier of last resort obligations, and the authority to manage numbering resources. Electing regulation under the plan does not prevent a customer from seeking assistance from the Public Staff of the Utilities Commission and electing providers must inform customer complainants that the customer may contact the Public Staff.

Each LEC is the carrier of last resort for the area in which it was certified to operate on July 1, 1995. The carrier of last resort (COLR and also known as the universal service provider) must provide basic local exchange service in this area.

S.L. 2005-85 modified this requirement by providing that when a competing telecommunications provider enters into an agreement to provide local telephone service to a subdivision or area, and the right of way or access to deliver phone service is not made available to other telecommunications providers, the LEC is relieved of its carrier of last resort obligations and the telecommunication service provider that entered into the agreement is considered the carrier of last resort. The LEC must notify the appropriate State agency that it is no longer the carrier of last resort.¹ The appropriate State agency retains the authority to re-designate the LEC as the carrier of last resort if the telecommunications provider that entered into the agreement is no longer willing or able to provide adequate services to the subdivision or area.

S.L. 2009-202 allowed carriers of last resort the authority to meet COLR obligations using any available technology that allows access to the local switched network, including traditional phone service, wireless, and VoIP (Voice over internet protocol).

¹ The Utilities Commission is generally the State agency. However, the Rural Electrification Authority has jurisdiction over certain providers.

Senate PCS 343

Page 2

A provider also may be granted a waiver of its COLR responsibilities if it makes a showing to the appropriate State agency of all of the following:

- Providing service in the area would be inequitable or unduly burdensome.
- One or more alternative service providers exist.
- Granting the waiver is in the public interest.

BILL ANALYSIS:

Subsection (l) alternative form of regulation: Local telephone providers (LECs) open to competition from competing local telephone providers (CLPs) may elect to participate in a new alternative form of regulation. This differs from the subsection (h) treatment in the following ways:

- The LEC will no longer have carrier of last resort responsibilities.
- The LEC will not be eligible to receive funds from a state fund that may be established to support universal service.
- The LEC will not be required to provide stand-alone basic service to rural customers at rates comparable to rates charged to urban customers.

Subsection (l) also clarifies that election of the new alternative form of regulation will not affect the authority of the Utilities Commission under two existing provisions:

- 47 USC 241(e) – This section provides which carriers are eligible to receive federal universal service funds. This section also provides that if an area is unserved either the FCC or the Utilities Commission may designate a carrier to provide service to the area. The FCC designates the carrier for interstate service; the Utilities Commission designates the carrier for intrastate service.
- Unbundled network elements and interconnection agreements – The Telecommunications Act of 1996 requires incumbent telephone providers to allow competing providers to interconnect to the unbundled network elements of the incumbent providers. Essentially these are the provisions that allow competing providers to provide service to individuals over the equipment of the incumbent providers. The price for access to the unbundled network elements is approved by the Utilities Commission. The agreements between the incumbent provider and the competing provider that allow access to the unbundled network elements are interconnection agreements. The Utilities Commission has the authority to arbitrate and enforce interconnection agreements.

Reports: Clarifies that reports required for providers that elect alternative subsection (h) treatment, or the subsection (l) treatment must file reports from the date the provider makes the election. Previously the reports were required from the date S.L. 2009-238 was enacted. The reports provide an analysis of telecommunications competition, customer satisfaction studies, and local exchange rates. Companies that elect alternative regulation under **subsection (l)** will only file reports for the first 3 years after electing the alternative regulation.

Regulatory Fee: Section 2 of the bill clarifies that revenues from service subject to the subsection (l) alternative form of regulation will remain subject to the utility regulatory fee.

EFFECTIVE DATE: This act is effective when it becomes law.